IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.597 OF 2006
WITH
CIVIL APPLICATION NO.779 OF 2006

Jahid Hussein Abdul Latif. ..Appellant.

V/s.

Municipal Corpn. of Gr.Mumbai. ..Respondent.

Mr.K.K.Tated for appellant.

Mr.Bhor for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 11, 2006.

P.C. :

1. Heard counsel for the parties. Admit.

2. Mr.Bhor waives notice for respondent. As short question is involved, appeal is taken up for final disposal forthwith, by consent.

3. This appeal from order takes exception to the Judgment and Order passed by the City Civil Court, Greater Mumbai dated August 2, 2006 in Notice of Motion No.836 of 2006 in L.C.Suit No.1019 of 2006. By this order the Court below dismissed the Notice of Motion taken out by the appellant/plaintiff. The appellant has filed suit before the trial Court for

declaration that the defendants are not entitled to demolish the premises of the plaintiff or dispossess the plaintiff from the suit premises without following due process of law and for permanent injunction. During the pendency of the said suit, the appellant took out Notice of Motion No. 836 of 2006. The same has been dismissed by the trial Court essentially observing that the plaintiff has not been able to establish any pakka document to show that he is staying in the suit premises prior to 1.1.1995 hence he is not eligible for alternate accommodation as per the extant policy of the defendant. In paragraph-5 of the impugned Judgment, the Court below has noted that it has perused the Action Papers produced by the defendants and was in agreement with the view so recorded by the concerned authority.

4. The grievance of the appellant is that neither the authority nor the Court below has considered several documents, which are pressed into service on behalf of the appellant, which would go to show that the appellant was in possession of the disputed premises prior to 1.1.1995. The documents such as Ration Card No.B1/94/620 which pertains to period prior to 1.1.1995 was produced before the Lower Court as also appended to the appeal memo

before this Court. The appellant is also relying on voter's list for 1st January, 1996 to support the stand that the appellant is resident of the said area and staying in the original premises prior to 1.1.1995. The appellant is also relying on other documents to support his submission that the Court below has not adverted to any of those documents though annexed to the plaint. Indeed, the trial Court cannot be blamed for this omission as the mistake was of the advocate and the plaintiff who did not remain present at the hearing of the Motion when the same was called out and could not point out relevant documents which would support the claim of the plaintiff. The appellant as well as his advocate remained absent before the trial Court on the relevant date.

5. Be that as it may, as there are documents to support the claim of the appellant that the appellant was in possession of the suit premises prior to 1.1.95, the appropriate course to my mind is to relegate the parties before the Trial Court for reconsideration of those documents and form a clear opinion about the efficacy of the said documents with reference to the claim of the plaintiff.

6. Accordingly, the impugned Judgment is set aside and Notice of Motion No.836 of 2006 is restored to the file to be heard and decided by the trial Court expeditiously preferably by end of October, 2006. The parties shall appear before the trial Court on 29th August, 2006 at 2.30 p.m. on which date the Court may pass suitable order, as may be required to ensure that the restored Notice of Motion is decided within the specified time.

7. It is made clear that observations in this order may not be construed as final opinion on merits of the contention. The Court below will have to examine materials on record afresh and proceed to record clear findings on the claim of the plaintiff on its own merits in accordance with the law. No order as to costs.

8. Till Notice of Motion is finally disposed of by the trial Court, the parties are directed to maintain status quo with regard to the suit property.

9. Appeal as well as civil application disposed of accordingly.